

### **REMARKS**

Claims 10, 13, 14, and 16-29 are now pending in the application. Claims 18-29 have been withdrawn from consideration. Claims 11, 12, and 15 have been cancelled and the subject matter has been incorporated into Claim 10. Claim 10 as amended now recites that the reservoir includes an entry compartment and a second compartment, that the compartments are separated by a grid, and that the catheter has a diameter of from about 0.5 Fr to about 15 Fr. No new matter has been added. The Examiner is respectfully requested to reconsider and withdraw the rejections in view of the amendments and remarks contained herein.

Applicant wishes to thank the Examiner for entering the amendments to the Specification filed 5/14/2007 and acknowledges the amendments will replace paragraph [0006] of the originally-filed specification.

Applicant also wishes to thank the Examiner for withdrawing the objections to the Drawings in light of the amendments to the Specification filed 5/14/2007.

### **RESTRICTION UNDER 37 C.F.R. 1.142(B)**

Applicant respectfully traverses the restriction under 37 C.F.R. 1.142(b) whereby the Examiner withdrew Claims 18-29 from consideration. Claims 18-29 have a sufficient connection to Claims 10-17 such that the restriction is improper. Claims 18-29 are connected to Claim 1 by at least one of the design of the orotracheal suction system, the operation of the orotracheal suction system, and the effect of use of use of the orotracheal suction system. MPEP §802.01(II). Specifically, Claim 18 incorporates the design of the orotracheal suction system of Claim 1, and in turn the system of Claim

1 is required for operation of the method of Claim 18. Further, there is no additional burden placed on the Examiner in examining the related claims together because the apparatus and methods are so related that no extraneous searching or analysis would be required. Accordingly, Applicant asserts that the restriction is improper and requests that Claims 18-29 be considered with Claims 10-17.

**REJECTION UNDER 35 U.S.C. § 112**

Claims 10, 13-14, and 16-17 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement. This rejection is respectfully traversed.

With respect to the language “a length sufficient to engage the oropharynx and distal bronchi of the patient,” Applicant asserts that with the various types of tracheal suction, the length of patients’ airways and blockage locations differ and the operator can readily assess the physical characteristics of the patient, such as size and anatomical restrictions, in determining the length necessary to engage the oropharynx. For example, one skilled in the art would readily appreciate that the length necessary to accommodate a child would not be the same as those necessary to accommodate an adult. Patient specific measurements for such devices are not uncommon. Accordingly, one skilled in the art would have more than enough information to determine the length required, and the claims are appropriately enabled under 35 U.S.C. §112, first paragraph. Reconsideration and removal of the rejection of the claims are respectfully requested.

Claims 10, 13-14, and 16-17 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite and failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. As stated above, one skilled in the art will readily appreciate the lengths of catheters necessary to accommodate patients of different sizes and anatomical restrictions. Further, with respect to Claim 14, Applicant points out that Claim 10, from which Claim 14 depends, has been amended to provide a diameter of from about 0.5 Fr to about 15 Fr. Accordingly, one skilled in the art would appreciate the subject matter of the invention, and the claims are definite in compliance with 35 U.S.C. §112. Reconsideration and removal of the rejection of the claims are respectfully requested.

#### **REJECTION UNDER 35 U.S.C. § 102**

Claims 10, 14, and 16 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Pell et al. (U.S. Pat. No. 4,850,348). This rejection is respectfully traversed.

Pell et al. disclose an endotracheal apparatus made of a material that bends through substantially 90 degrees without the wall collapsing or kinking due to a special tube material formed of silicone, a silica filler, and platinum salts. Column 2, line 62 through Column 3, line 11. The Pell et al. apparatus is disclosed as being adapted to be connected to a ventilator or oxygen source and/or a suction device. Column 3, lines 40-43 and Column 5, lines 27-33.

The focus of the Pell et al. disclosure is the bendable and non-collapsible material, and Pell et al. provide no disclosure on the specifics of the reservoir being

formed as a multi-compartment chamber having a grid separating the entry and second compartments. The Office Action asserts, however, that Pell et al. disclose “a reservoir (the suction source, column 5, line 33) operable to connect to the extension tubing...wherein the reservoir comprises an entry compartment and a second compartment as all reservoirs do...” Office Action at page 5. Applicant is unsure of the foundation of the Office’s assertion that “the reservoir comprises an entry compartment and a second compartment **as all reservoirs do.**” Office Action at page 5, emphasis added. As Pell et al. do not disclose any details for the reservoir or for the separating grid, Pell et al. do not disclose each and every element of Applicant’s claimed invention as amended, and the §102 rejection is improper. Reconsideration and removal of the §102 rejection of the claims are respectfully requested.

Claims 10, 13-14, and 16-17 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Joseph (U.S. Pat. No. 5,819,723). This rejection is respectfully traversed.

Joseph discloses a tracheal tube system and related methods for preventing the spread of infected secretions into the distal trachea where the tracheal tube system blocks the infected secretions and delivers an irrigating liquid to the area via an irrigation channel near the exterior surface of the tracheal tube. Column 4, lines 34-53 and Column 7, lines 46-62. Joseph discloses a canister 402 for removing aspirated fluids and a suction regulator, where the suction source is typically wall suction. Column 8, lines 13-28.

Joseph does not disclose any additional information on the canister 402 and provides no disclosure on the specifics of the reservoir being formed as a multi-

compartment chamber having a grid separating the entry and second compartments. The Office Action indicates that Joseph discloses “a reservoir (402) operable to connect to the extension tubing...wherein the reservoir comprises an entry compartment and a second compartment as all reservoirs do, wherein the reservoir has a grid and a removable disc...” Office Action at pages 5-6. Again, Applicant is unsure of the foundation of the Office's assertion that “the reservoir comprises an entry compartment and a second compartment as all reservoirs do.” Office Action at page 5, emphasis added. As Joseph does not disclose any details for the reservoir, Joseph does not disclose each and every element of Applicant's claimed invention as amended, and the §102 rejection is improper. Reconsideration and removal of the §102 rejection of the claims is respectfully requested.

**CONCLUSION**

Applicant submits that a full and complete response has been made to the outstanding Office Action and the present application is in condition for allowance. Applicant therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding rejections. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

Dated: September 13, 2007

By:   
David L. Suter, Reg. No. 30,692

HARNESS, DICKEY & PIERCE, P.L.C.  
P.O. Box 828  
Bloomfield Hills, Michigan 48303  
(248) 641-1600

DLS/SDJ/tp